

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6515 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR. K.G.BALAKRISHNAN
and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @@

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

KM DAMOR

Versus

STATE OF GUJARAT

Appearance:

MR JV JAPEE for Petitioner

MR KAMAL MEHTA,AGP for respondents.

CORAM : CHIEF JUSTICE MR. K.G.BALAKRISHNAN and
MR.JUSTICE J.M.PANCHAL

Date of decision: 12/08/98

ORAL JUDGEMENT

(Per : J.M.Panchal,J.)

Rule. Mr. Kamal Mehta, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

At the request of the learned Counsel appearing for the parties, the petition is taken-up for final hearing today.

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to declare that section 6(B)(1-A) of the Bombay Home Guards Act, 1947 is ultra vires Articles 14 & 16 of the Constitution. The petitioner has further prayed to issue a writ of mandamus or any other appropriate writ or order to quash and set aside order dated December 11, 1995 passed by the Deputy Commandant General relieving the petitioner as a member of Home Guards Service at the instance of direction issued by the State Government.

The petitioner was a member of Home Guards Service. The State Government issued general direction to the Deputy Commandant General to relieve all members of Home Guards Service. The Deputy Commandant General, therefore, issued order dated December 11, 1995 relieving the petitioner from service, which has given rise to present petition.

At the time of hearing of the petition, learned Counsel for the petitioner has given-up challenge to the vires of Section 6(B)(1-A) of the Bombay Home Guards Act, 1947. Under the circumstances, the prayer made in Para-9(A) is rejected as not pressed.

From the averments made in the petition, it is evident that order dated December 11, 1995 relieving the petitioner from service was passed by the Deputy Commandant General in view of directions issued by the State Government. Section 6(B)(1-A) of the Act provides that the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed, if in the opinion of the Commandant, services of such member are no longer required. Rule 9(A) of the Rules provides that no member of the Home Guards shall be discharged under section

6(B)(1-A) of the Act, unless the Commandant or Commandant General is satisfied that such member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation. In the case of A.K.JADEJA vs. STATE OF GUJARAT, JUDGMENT TODAY 1995(6) SC. 146, the Apex Court has held that when statutory power is conferred upon one authority and is in substance exercised by another, such decision would be ultra vires and void. In the present case, statutory authorities are Commandant and Commandant General and not Deputy Commandant, who has passed order relieving the present petitioner from service at the behest of Government. In fact, the impugned order is passed by the State Government, which is ultra vires. Similar view is taken in Special Civil Application no. 3502/96 decided by Court (Coram : The Actg.C.J. R.A.Mehta & C.K.Thakker,J.) on January 28, 1997 and Special Civil Application no. 5237/97 and other cognate matters decided by Court (Coram: The Actg.C.J. R.A.Mehta & S.D.Pandit,J.) on October 7, 1997. Therefore, the petition deserves to be partly accepted.

For the foregoing reasons, the petition partly succeeds. The impugned order terminating the services of the petitioner is declared to be void and illegal. Annexure-B to the petition is hereby set aside and quashed. The respondents are directed to reinstate the petitioner on his original post within one month from the date of receipt of the writ. Rule is made absolute to the extent indicated hereinabove, with no order as to costs.

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(patel)